No. 85-1017

(2)

Supreme Court, U.S.
FILED
JAN 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1985

ROCKET OIL COMPANY, PETITIONER

*v.*

FEDERAL DEPOSIT INSURANCE CORPORATION AND DEPOSIT INSURANCE NATIONAL BANK OF OKLAHOMA CITY, OKLAHOMA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

## MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

CHARLES FRIED
*Solicitor General*
*Department of Justice*
*Washington, D.C. 20530*
*(202) 633-2217*

BEST AVAILABLE COPY

3PP

# In the Supreme Court of the United States

OCTOBER TERM, 1985

---

No. 85-1017

ROCKET OIL COMPANY, PETITIONER

*v.*

FEDERAL DEPOSIT INSURANCE CORPORATION AND DEPOSIT INSURANCE NATIONAL BANK OF OKLAHOMA CITY, OKLAHOMA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

---

**MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION**

---

Petitioner, a depositor of an insolvent bank, challenges the same court of appeals decision (Pet. App. 4a-9a) at issue in *All Souls Episcopal Church* v. *FDIC*, No. 85-708.

1. On Thursday, July 1, 1982, Penn Square Bank, N.A. (Penn Square) issued a cashier's check in the amount of $1,480,273.98 to petitioner, Rocket Oil Company (Rocket). On Monday, July 5, 1982, Penn Square was declared insolvent, the Federal Deposit Insurance Corporation was appointed receiver and, in turn, created the Deposit Insurance National Bank of Oklahoma City, Oklahoma (DINB) as its agent to distribute the insured portion of deposits in the failed bank. Upon declaration of Penn Square's insolvency, Rocket's cashier's check became a deposit in the insolvent bank. 12 U.S.C. 1813(*l*)(4). Thus, as a depositor,

Rocket was entitled to $100,000 in federal deposit insurance. 12 U.S.C. 1813(m)(1). Pet. App. 5a-7a.

On July 6, 1982, the cashier's check was presented to DINB for payment. DINB mistakenly paid out the face amount of the check rather than the $100,000 to which Rocket was entitled. Shortly thereafter, respondents commenced this action for restitution of the overpayment to petitioner. Pet. App. 6a, 15a-16a.

2. Pursuant to Fed. R. Civ. P. 42(a), this case was considered together with the similar suit brought against the petitioner in No. 85-708. The district court granted summary judgment in favor of the depositors (Pet. App. 23a) and, on appeal, the Tenth Circuit reversed (*id.* at 9a). It held that respondents were entitled to restitution of the mistakenly-paid balance (*ibid.*).

3. Petitioner raises the same arguments presented in No. 85-708.[1] As our memorandum in opposition in No. 85-708[2] explained, the decision below is correct and there is no occasion for this Court's review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
*Solicitor General*

JANUARY 1986

---

[1]In support of these contentions, petitioner asserts (at 15) the additional claim that the Tenth Circuit's decision in *All Souls* is somehow inconsistent with that court's decision in *Philadelphia Gear Corp.* v. *FDIC*, 751 F.2d 1131 (1984), cert. granted, No. 84-1972 (Oct. 21, 1985). *Philadelphia Gear* deals with the question whether a bank's obligation under an unfunded standby letter of credit is a federally-insured bank deposit. The issues in *Philadelphia Gear* have no application to this case, where there is no dispute over the fact that petitioner was an insured depositor.

[2]We are providing petitioner's counsel with a copy of our submission in No. 85-708.